

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ROBERT KINANN, et al.,

Plaintiffs,

No. C 10-2608 PJH

v.

**ORDER OF DISMISSAL**

CENTEX HOME EQUITY COMPANY,  
et al.,

Defendants.

On March 25, 2011, the court issued an order to show cause why plaintiffs' claims as to defendant All Fund should not be dismissed for failure to effect service of process pursuant to Federal Rule of Civil Procedure 4, plaintiffs having failed to file the requisite proof of service with the court regarding service of the summons and complaint. Plaintiffs were instructed to file any opposition to the order to show cause within ten days of the order's date, or risk dismissal of their complaint as to All Fund. That deadline having passed, plaintiffs still have yet to file any opposition or response.

When circumstances make such action appropriate, a district court may dismiss an action for failure to timely effect service of process. See Fed. R. Civ. P. 4. Here, plaintiffs' failure to file a proof of service demonstrating timely service, and plaintiffs' further failure to file any response to the court's March 25 order establishing good cause for an extension of time for service, constitute circumstances warranting the court's dismissal of plaintiffs' complaint pursuant to Rule 4(m). See Efaw v. Williams, 473 F.3d 1038, 1040-41 (9th Cir. 2007). Moreover, in view of plaintiffs' failure to respond, the court concludes that any prejudice to plaintiffs as a result of dismissal, is outweighed by the prejudice that the named but unserved defendant will suffer if the action is allowed to continue.

Accordingly, the complaint is DISMISSED as to defendant All Fund. The dismissal is without prejudice.

**IT IS SO ORDERED.**

Dated: April 11, 2011



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PHYLLIS J. HAMILTON  
United States District Judge